ARTICLES ON THE EFFECTS OF ARMED CONFLICTS ON TREATIES

At its fifty-second session, in 2000, the Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, identified the topic “Effects of armed conflicts on treaties” for inclusion in its long-term programme of work (A/55/10, paras. 726-729). A brief syllabus describing the possible overall structure of, and approach to, the topic was annexed to that year’s report of the Commission (A/55/10, annex (2)). The syllabus noted that the topic had been set aside by the Commission in its work on the law of treaties and formed part of the saving clause in the Vienna Convention on the Law of Treaties (article 73). The syllabus further recognized that the subject was ideal for codification and/or progressive development as, on the one hand, there was considerable practice and experience and, on the other hand, there were elements of uncertainty. It further noted that the topic received a wide range of support in the Working Group on the long-term programme of work and that it was generally recognized that there was a continuing need for clarification of the law in the area.

The General Assembly, in resolution 55/152 of 12 December 2000, took note of the Commission’s report concerning its long-term programme of work and, in resolution 56/82 of 12 December 2001, the Assembly requested the Commission to further consider the topic, having due regard to comments made by Governments.

At its fifty-sixth session, in 2004, the Commission decided to include the topic “Effects of armed conflicts on treaties” in its programme of work and to appoint Mr. Ian Brownlie as Special Rapporteur for the topic (A/59/10, para. 364). The General Assembly, in resolution 59/41 of 2 December 2004, endorsed the Commission’s decision to include the topic in its programme of work.

At its fifty-seventh and fifty-eighth sessions, in 2005 and 2006, respectively, the Commission received and considered the first two reports of the Special Rapporteur (A/CN.4/552 and A/CN.4/570 and Corr.1), as well as a memorandum prepared by the Secretariat (A/CN.4/550 and Corr.1). At its fifty-seventh session, in 2005, the Commission endorsed the Special Rapporteur's suggestion that the Secretariat circulate a note to Governments requesting information about their practice with regard to the topic, in particular the more contemporary practice (A/60/10, paras. 108–191).

The first reading of the draft articles continued at the fifty-ninth and sixtieth sessions, in 2007 and 2008, respectively, on the basis of the third (A/CN.4/578 and Corr.1) and fourth (A/CN.4/589) reports of the Special Rapporteur. At its fifty-ninth session, in 2007, the Commission decided to establish a Working Group under the Chairmanship of Mr. Lucius Caflisch (A/62/10, para. 16).

The General Assembly, in resolution 62/66 of 6 December 2007, reiterated its invitation to Governments to provide information to the Commission regarding State practice, in particular more contemporary practice, on the topic.
At its sixtieth session, in 2008, the Commission adopted, on first reading, a set of 18 draft articles on the effects of armed conflicts on treaties, together with an annex and a set of commentaries (A/63/10, para. 62). In accordance with articles 16 to 21 of its Statute, the Commission transmitted the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2010 (A/63/10, para. 63).

In resolution 63/123 of 11 December 2008, the General Assembly expressed its appreciation to the Commission for the completion of the first reading of the draft articles on the topic “Effects of armed conflicts on treaties” and drew attention of Governments to the importance for the Commission of having their comments and observations on the draft articles and commentaries thereto by the requested date.

Following the resignation from the Commission of Mr. Ian Brownlie, the Commission appointed Mr. Lucius Caflisch as Special Rapporteur for the topic at its sixty-first session, in 2009 (A/64/10, para. 229).

At its sixty-second session, in 2010, the Commission had before it the first report of the new Special Rapporteur (A/CN.4/627 and Add.1), containing his proposals for the reformulation of the draft articles as adopted on first reading, taking into account the comments and observations of Governments. The Commission also had before it a compilation of written comments and observations received from Governments (A/CN.4/622 and Add.1). The Commission referred draft articles 1 to 17 to the Drafting Committee (A/65/10, para. 190).

At the sixty-third session, in 2011, the Commission continued and completed the second reading (commenced at its sixty-second session in 2010) of the draft articles on the effects of armed conflicts on treaties. The Commission was thus able to adopt, on second reading, a set of 18 draft articles and an annex (containing a list of treaties the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries thereto, on the topic (A/66/10, paras. 100 and 101). The draft articles were divided into three parts, as follows: Part I entitled “Scope and definitions” (articles 1 and 2); Part II entitled “Principles” (articles 3 to 13); and Part III entitled “Miscellaneous” (articles 14 to 18).

In accordance with article 23 of its Statute, the Commission recommended to the General Assembly to take note of the draft articles in a resolution and to annex them to the resolution, and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles (A/66/10, para. 97).

In resolution 66/99 of 9 December 2011, the General Assembly took note of the articles on the effects of armed conflicts on treaties, the text of which was annexed to the resolution, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. It further decided to return to the topic at its sixty-ninth session, in 2014, with a view to examining, inter alia, the question of the form that might be given to the draft articles.